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POLICY BRIEF

Senate Post Audit and Oversight Bureau
Chair, Senator Cheryl A. Jacques

WORKERS' COMPENSATION WINDFALL

MASSACHUSETTS WORKERS' COMPENSATION INSURERS CONTINUE TO MAKE WINDFALL PROFITS WELL ABOVE THE NATIONAL AVERAGE

FEBRUARY 1999

- IN 1997, COMPANIES SELLING WORKERS' COMPENSATION INSURANCE IN MASSACHUSETTS MADE A 29.6% PROFIT ON INSURANCE TRANSACTIONS, MORE THAN *TWICE* THE NATIONAL AVERAGE OF 14.3%.

- REDUCTIONS IN WORKERS' COMPENSATION INSURANCE RATES HAVE BEEN LIMITED BECAUSE THE COMMISSIONER OF INSURANCE HAS DELAYED THE INITIATION OF RATE REVIEWS.

- THE LEGISLATURE IS CURRENTLY CONSIDERING A BILL AIMED AT INCREASING BENEFITS FOR INJURED WORKERS.

Every year, thousands of Massachusetts workers are injured on the job. Recent profitability figures published by the National Association of Insurance Commissioners (NAIC) suggest that workers are receiving too little and employers are paying too much, while insurance companies are reaping the benefits of workers' compensation reforms.

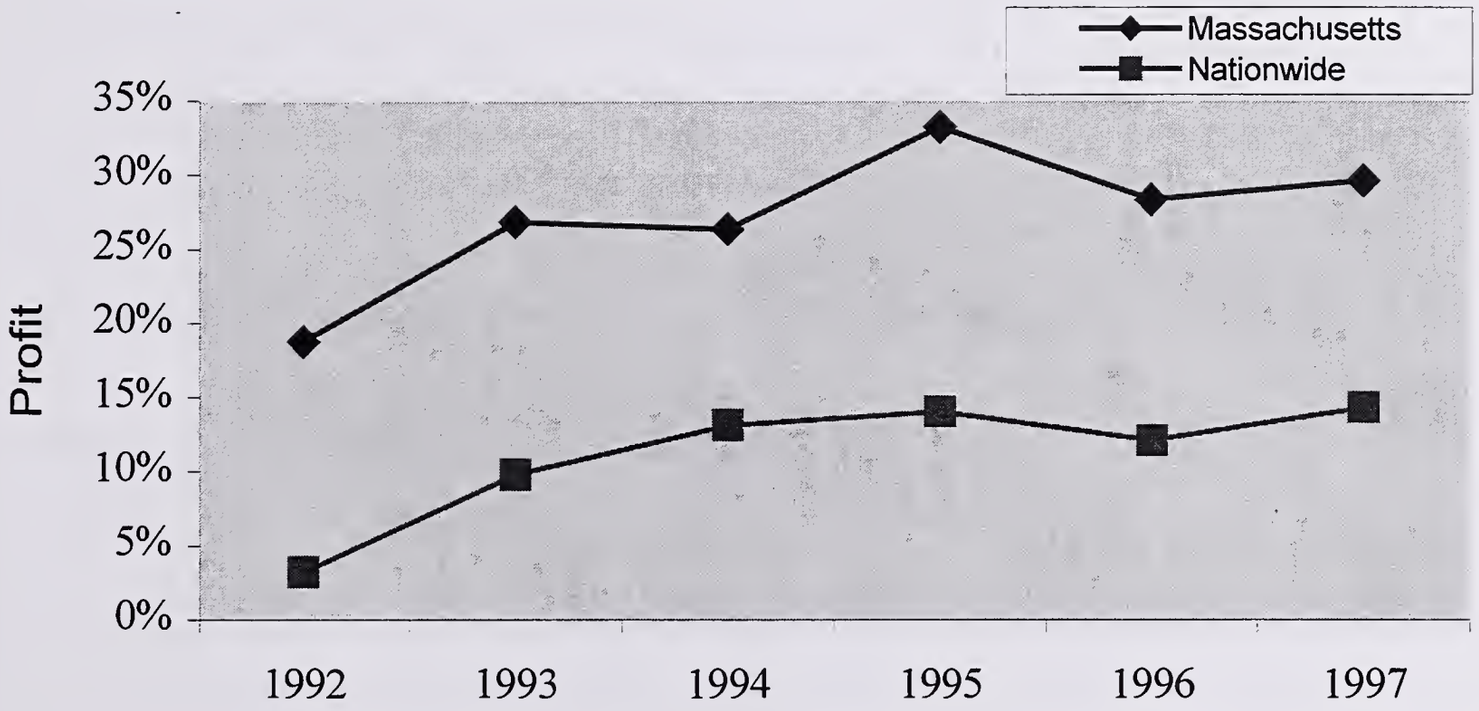
Background: Workers' Compensation in the 1990's

In December 1991, the Legislature reformed the workers' compensation law to address the system's increasingly high cost to businesses. (Chapter 398 of the Acts of 1991.) The reform law included a reduction of the benefit rate from 66.7% to 60.0% of a worker's average weekly wage and gave the Commissioner of Insurance increased authority to order rate filings, the process through which the Division of Insurance reviews and adjusts workers' compensation insurance rates. According to M.G.L. c.152 §53A(2), there *must* be a rate filing every two years and the Commissioner *may* call for a rate filing more frequently. The reform bill granted the Commissioner this enhanced authority in order to ensure timely workers' compensation rate adjustments.

Profitability Of Insurance Companies

Massachusetts insurers have reaped tremendous profits from the 1991 reform. The NAIC reported that Massachusetts workers' compensation insurers earned a 29.6% profit on insurance transactions in 1997, more than twice the national average of 14.3%. In fact, through most of the decade, Massachusetts workers' compensation insurance companies have maintained profit rates of at least double the national average, despite a statutory prohibition against excessive premiums. M.G.L. c.152 §53A(7).[1]

Profit on Workers' Compensation Insurance Transactions



Source: National Association of Insurance Commissioners, *Report on Profitability by Line by State in 1997*

Delayed Rate Filings

There have been four consecutive double digit rate reductions for employers since 1993 on workers' compensation rates: 10.2% in 1994, 16.5% in 1995, 12.2% in 1996, and 21.1% in 1998. Although employers have realized savings through lower workers' compensation insurance premiums from the 1991 reform law, extraordinary profits for insurers suggest that employers are still paying far too much.

In addition, the full effect of these reductions has been delayed, limiting the benefit of reduced rates for many employers. These delays are the result of the Commissioner's unwillingness to call for rate filings in a timely fashion. In his letter of resignation to the Governor, Stephen D'Amato, former Director of the State Ratings Bureau (SRB), criticized the Commissioner for being slow to call for rate adjustments. Under the law, if

[1] The NAIC's 1997 data that are cited above were released in December 1998. The scheduled date for release of the NAIC's 1998 data is December 1999.

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the Commissioner decides to decrease rates for workers' compensation, the new rates take effect six months after the date of the original rate filing. M.G.L. c.152 §53A(8). The combined effect of the Commissioner's inaction and the six month implementation period can turn an untimely filing into an unwieldy delay.

For example, in 1997 even the insurance industry acknowledged that workers' compensation premiums were too high. Insurers called for an 11% rate decrease, while the SRB called for a 32% decrease. While the Commissioner eventually agreed to decrease rates by 21.1%, the crucial factor was timing. A significant percentage of employers renewed their policies on January 1, 1998. However, the Commissioner decided that the new rates would not go into effect until February 14, 1998. As a result, many employers were forced to renew their policies under the old, higher rates, meaning that the 1997 rate filing did not save money for these employers until 1999.

In early 1998, believing that another rate decrease was necessary, the SRB filed a motion asking the Commissioner to order another rate filing. The Commissioner refused the request. The SRB persisted, again requesting that the Commissioner order a rate filing, and again the Commissioner refused. According to D'Amato, as a result of these delays in calling for rate filings, "thousands of employers will not receive the rate decrease they deserve...By allowing the worker's compensation insurers to delay rate decreases for a combined period of well over a year, the Commissioner has cost the employers of Massachusetts tens, and potentially hundreds, of millions of dollars."

Findings and Recommendations

Finding

- Workers' compensation insurers in Massachusetts are realizing extraordinary profits as a result of excessive premiums charged to employers, lower benefit rates paid to injured workers, and delays in the ordering of rate filings by the Commissioner of Insurance.

Recommendations

- The Commissioner of Insurance should ensure that employers are reaping the full benefits of the 1991 reform legislation by immediately ordering a rate filing to reduce workers' compensation insurance rates.
- The Legislature should ensure that injured workers receive fair workers' compensation benefits by considering proposals such as House Bill #1319, filed by Representative Antonio Cabral and Senator Stephen Lynch, which would increase workers' compensation benefits for injured workers.
- The Commissioner of Insurance should make more extensive use of his or her authority to order rate filings in order to ensure timely and appropriate adjustments in workers' compensation insurance rates.

We gratefully acknowledge the assistance of the Massachusetts Division of Insurance, the National Association of Insurance Commissioners, Carolyn Baker Ringel, and Jocelyn Benson in preparing this policy brief. For more information, contact Senator Cheryl Jacques, Chair of the Senate Post Audit and Oversight Committee, at either cjacques@senate.state.ma.us or (617) 722-1555.